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No. _____

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1990

EDWARD R. WYATT,

Petitioner,

v.

ROBIN S. THOMAS and
MICHAEL ANTHONY PROFFIT

Respondents.

PETITION FOR WRIT OF CERTIORARI
To the Circuit Court of Smyth County,
Virginia

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether or not, the Fourteenth Amendment gives a party in interest the right to intervene and protect his interest.

2. Whether or not, the "sole" owner of a corporation has a right under the Fourteenth Amendent to protect his corporation.

3. Whether or not, the Fifth and Fourteenth Amendment gives citizens the right to terminate a counsel and represent their own interest.

4. Whether or not, the Due Process Clause of the Fourteenth Amendent requires a Judge to enter judgment against a party who is in default, or gives the Judge the right to drop a party who is in default, and add another party.

5. Whether or not, the Due Process Clause of the Fourteenth Amendment allows

a party in a civil suit to question witnesses to their bias and interest.

6. Whether or not the Fourteenth Amendment and Civil Rights 13.8 gives parties, and party representatives the right to conspire against the opposing party, introduce evidence that is known to be false, and for the sole purpose of degrading a witness.

7. Whether or not the Due Process Clause of the Fourteenth Amendment requires an insurance company to defend the insured in a civil suit.

8. Whether or not the Fourteenth Amendment permits the "sole" owner of a corporation to file an appeal on behalf of his corporation.

9. Whether or not, the Due Process Clause of the Fourteenth Amendment gives the Judge the right to dismiss a complaint against a defendant when the matter is in dispute, and grant motions on the same day

presented without giving the party against whom the motions were made time to defend.

10. Whether or not the due process clause of the Fourteenth Amendment allows the plaintiff equal access to insurance investigations.

11. Whether or not the judge should disqualify himself when there is a conflict of interest.

12. Whether or not 28 U.S.C. 1441 governs Uninsured Motorist Carriers.

LIST OF PARTIES

The parties to the proceedings below were the petitioner, Edward R. Wyatt, Wyatt Mining Equipment, Inc., and the respondents were Robin S. Thomas and Michael Anthony Proffit.

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October Term, 1990

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v.

ROBIN S. THOMAS and
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Respondents.

PETITION FOR A WRIT OF CERTIORARI
To the Circuit Court of Smyth
County, Virginia

Edward R. Wyatt, sole owner, president, registered agent, secretary, and treasurer of Wyatt Mining Equipment, Inc., hereby petition for a writ of certiorari to review the judgment of the Circuit Court of Smyth County, Virginia in this case.

OPINIONS BELOW

The Opinion of the Supreme Court of Virginia. (Appendix B).

The Opinions of the Circuit Court of Smyth County, Virginia. (Appendix C, D, E, F).

JURISDICTION

The judgment of the Supreme Court of Virginia. On October 22, 1990, the Chief Justice extended the time within to file a petition for a writ of certiorari to November 28, 1990. 42 U.S.C.A. ss1983. 28 U.S.C.ss1651. 28 U.S.C.ss1257.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. The Fifth Amendment to the United States Constitution provides in relevant part:

> "No person shall be deprived of life, liberty, or property, without due process of law."

2 . The Fourteenth Amendment to the United States Constitution provides in relevant part:

> "Nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

3. Am. Jur. 2d. 15 Civil Rights:

> "The due process clause was intended in addition to other guaranties of private rights, to give increased security against orbitrary deprivation of life or liberty, or the arbitrary spoilation of property."

4. 18 U.S.C. ss242:

> "Is concerned only with deprivation of rights guaranteed by federal law or the Constitution."

5. Civil Right 13.8:

> "If ... two or more persons conspire for the purpose of impeding, hindering, obstructionary or defeating, in any manner, the due course of justice in any State or Territory, with intent to deny to any citizen the equal protection of the laws,..."

6. 28 U.S.C. 1441:

"Uninsured Motorist Carrier."

7. Am. Jur. 2d:

"Effect of Certificate of title or name in which vehicle is registered."

8. 7A Am. Jur. 2d (Rev):

"Automobiles and Highway Traffic ssss 422-424."

9. 8 Am. Jur. 2d (Rev):

"Automobiles and Highway Traffic ss 1110."

STATEMENT OF THE CASE

The facts giving rise to the litigation can be summarized briefly. On October 31, 1987, at approximately 1:00 P.M. Edward R. Wyatt, "sole" owner, operator, president, registered agent, secretary, and treasurer of Wyatt Mining Equipment, Inc., which in no longer active, gave Ms. Thomas permission to drive a 1985 Lincoln Continental Automobile titled in the name of Wyatt

Mining Equipment Inc., and insured in the name of Edward R. Wyatt. Ms. Thomas was given permission to drive said vehicle to the Cato's Department Store in Marion, Virginia, where she was to carry on certain business and return the automobile to the residence of Mr. Wyatt.

Not with-standing her duty to safe-keep anothers property, Ms Thomas took the said automobile to another town and put it in possession of Mr. Proffit, who had no drivers license, and was drunk. At approximately 10:00 P.M., Mr. Proffit drove the said automobile and collided with two (2) other automobiles parked along the side of the highway and "total lossed" the 1987 Lincoln Continental

On November 2, 1987, Mr. Wyatt reported said accident to his insurance agent, AAA of Virginia, representing Allstate Insurance Company (Allstate), Mr. Wyatt's carrier, and filed a claim under

the Uninsured Mortorist provisions. Allstate declined coverage citing "38.1-381" of the Code of Virginia and stated that:

> "Mr Wyatt's vehicle does not qualify as an uninsured vehicle, the uninsured motorists provisions under his automobile policy do not apply".

On July 20, 1988 Motion For Judgment was filed in the Circuit Court of Smyth County, Virginia by Edward R. Wyatt demanding judgment against Robin S. Thomas and Michael Anthony Proffit, with service of process served upon Virginia Mutual Insurance Company (Va. Mut.), Ms. Thomas' carrier, and Allstate Insurance Company (Allstate), Mr. Wyatt's carrier. Mr. Howard C. McElroy, counsel for Allstate, and Mr. James N.L. Humphreys, counsel for Va. Mut. representing Ms. Thomas, "jointly" represented Ms. Thomas, Mr. Proffit, and Allstate.

On May 2, 1989, at the hearing on

the pleadings, all in the same Order entered on May 22, 1989, styled EDWARD R. WYATT, et at, Plaintiffs, v. ROBIN S. THOMAS, et al, Defendants, (Appendix F)

Judge Flannagan:

1. "Granted Edward R. Wyatt's Motion For Leave To Add Wyatt Mining Equipment, Inc. as a party Plaintiff (Appendix S).

2. "Granted Motion To Add Party Plaintiff, Wyatt Mining Equipment, Inc. (Appendix U).

3. "Dismissed with prejudice Edward R. Wyatt's claims against Ms. Thomas and Mr. Proffit, and required Wyatt Mining Equipment, Inc. to file a Motion For Judgment and gave Ms. Thomas, Mr. Proffit, and Allstate another twenty-one (21) days after its service to file responsive pleadings (Appendix F).

4. "Denied Motion For Default Judgment against Mr. Proffit, who had not filed responsive pleading (Appendix T, P) (M.T.S.A. pg. 8, ln. 13 - pg. 11, ln. 3) (Appeal err 1, arg. A.)"

5. "Granted Summary Judgment for Ms. Thomas, and Allstate (Appendix H, I, P) (Appeal err 2, arg. H.)"

Judge Flannagan's rulings were on

the grounds that Edward R. Wyatt had no interest in this matter and stated in the M.T.S.A. hearing, when he had required Edward R. Wyatt to be dropped (M.T.S.A. trn. pg. 40, lns. 12 - 14):

> "I think the record is clear that Mr. Proffit has not filed an answer, nor anyone on his behalf individually."

(M.T.S.A. trn. pg. 45 ln. 13-pg.46,ln 5):

> "Further, as was indicated, the, as filed, as the record will show, it is clear that the change in midstream from the claim of Ed Wyatt to Wyatt Mining Equipment, Incorporated, as Mr. McElroy has pointed out, the motion for default in the technical status of those pleadings create an unusual situation. With respect to Mr. Proffit, the law is also clear, I believe, that, I believe the case that comes to mind is one where a demurrer would have been sustainable and the court found that a default judgment was not appropriate where a demurrer was sustainable, and certaintly, the court had made the determination that "Mr. Wyatt, individually, had no claim for these damages", and it would not have been appropriate for Mr. Wyatt under those circumstances to have recovered a default

judgment against someone for damages for which it was clear he had no claim (Appendix F, G, H, I, P) (Appeal err 10, arg.J)".

At the beginning of the trial of September 20, 1989, Ms. Thomas presented and Judge Flannagan granted a Motion In Limine, "denying Wyatt Mining the right to question Nancy Smith, an agent of Allstate, to her interest and bias", and threatened a mistrial if any attempt was made to question said witness to her interest and bias (Appendix J, P, Q.)

Judge Flannagan refused to allow Wyatt Mining to present any evidence or exhibits, (Appendix M) other than pictures of the automobile, and sustained an objection that was never made when Wyatt Mining attempted to enter the odometer milage document from the dealer where said automobile was purchased (Trl. trn. pg. 72, ln. 18-pg. 73, ln. 15):

THE COURT: "Just a minute now. I

have sustained the objection to the document. I take it you are not asking the witness to state what that number is?"

MR. HUTTON: "I'm just going to ask that the document be introduced.

THE COURT: "All right. I have sustained the objection. It will be marked for identification only. The objection on the basic of hearsay is sustained (Appendix P) (M.T.S.A. err 3, pg. 12, ln. 5 - pg. 13, ln. 25) (Appeal err 9, arg. I)".

Over objection, Judge Flannagan allowed Ms. Thomas to mislead the jury by making false statements about Mr. Wyatt's driving record, that he had been recently convicted of DUI in this court and said conviction was on appeal to the Virginia Court of Appeals at this time (Appendix V) (Trl. trn. pg. 70, ln. 18 thru page 72, ln. 4) (Appeal err 8, arg. H).

After testimony of Mr. Wyatt, Ms. Thomas, and Mr. Proffit, Ms. Thomas made a Motion To Strike on the grounds that there was no evidence of Ms. Thomas'

negligent intrustment by turning the car over to Mr. Proffit. Wyatt Mining opposed on the grounds that there was sufficient evidence to put before the Jury. That it was obvious Mr. Wyatt had to rely on testimony because he was asleep when the automobile was taken and had to rely on what he was told (Appendix P, W) (pg.79, ln. 12-pg, 82, ln. 25) (M.T.S.A. pg. 14, ln. 5-pg. 16, ln. 12) (Appeal err 3, arg. C). Judge Flannagan granted said motion (Trl. trn. pg. 82, ln. 18 thru 25):

> "there's some evidence that Mr. Doan had the car and then Mr. Proffit had the car. There is no evidence that the defendant Thomas entrusted the car to Mr. Proffit. We have to "void" any evidence in that regard and the burden in this case is upon the plaintiff to prove that, in fact, Ms. Thomas entrusted the car to Mr. Proffit and that evidence is not there and I will sustain the motion to strike as to the defendant Thomas."

Mr. Proffit was then allowed to present his case even though he had not

yet filed a responsive, nor had anyone on his behalf. After allowing Ms. Nancy Smith to testify for Mr. Proffit, Judge called recess and asked Mr. Proffit to come to his chambers. After recess, Mr. Proffit read his argument from a letter which had been prepared. After the trial, Mr. Proffit told Mr. Wyatt that Judge Flannagan advised him:

> "Mr. Proffit, as you know, Mr. Wyatt didn't contribute to this accident in any way, but you must go out there and convince the jury that he did or Allstate will have to pay for the damages and they in turn will sue you and you will never own anything the rest of your life".

Allstate then prepare the statement which Mr. Proffit read to the jury (Appeal err 7, arg. G).

Instructions to the jury, prepared by Allstate, after dismissing Edward R. Wyatt on the grounds that he had no interest, and after striking the evidence of Wyatt Mining against Ms.

Thomas (Appendix N).

Wyatt Mining objected to said instructions on the grounds that there was no evidence to support contributory negligence instructions (Appendix P). Judge Flannagan stated that (Trl. trn. pg. 95, ln 16 thru 18):

> "The evidence certainly is conflicting, but I believe that's relevant for the Jury to resolve that conflict so it will be granted".

After Mr. Proffit was allowed to read the statement prepared by Judge Flannagan and Allstate (trl. tr. pg. 101, ln. 25, thru pg. 103, ln. 10), the jury was out only fifteen minutes before returning with a verdict of not guilty.

After filing M.T.S.A., Mr. Hutton, Wyatt Minings counsel, requested and was allowed to resign. Without funds for other counsel, Mr. Wyatt proceeded to represent Wyatt Mining. Upon receiving a copy of the trial transcript and finding

it to be radical, Wyatt Mining filed Subpoena Duces Tecum on Monica Cook, Court Reporter, for open-microphone tapes of the trial and of the deposition of Edward R. Wyatt of October 21, 1988. Other Subpoenas Duces Tecum were filed on Allstate, Virginia Farm Mutual, carrier of Mildred Holly, owner of a 1987 Ford Truck that was involved in said wreck, and State Farm Insurance Company, carrier of Ruth Silvers, owner of a 1987 Toyoto that was involved in said wreck, for production of said insurance companies investigation files. Mr. Humphreys, counsel for Va. Mut., representing Ms. Thomas, and Mr. McElroy, representing Mr. Proffit and Allstate, jointly filed Motions To Quash all said subpoena Duces Tecums (Appendix K, L, R).

At the hearing, Mr. Humphreys and Mr. McElroy, assisted by Christen W. Burkholder, of Woodward, Miles &

Flannagan, P.C., "who Judge Flannagan had been a pardner", jointly represented Virginia Farm Mutual, State Farm, Allstate, Farm Mutual, and Monica Cook. Mr. Wyatt alleged conspiracy, conflict of interest, unethical practice of law, and tampering with a trial transcript (Trn. pg. 7, ln. 13-pg. 21, ln. 15). Judge Flannagan's reply was only that (Trn. pg. 17, ln. 2-10):

> "They are strong allegations. And the Court has no desire, of course, to uphold anything that was obtained fraudulently, if those allegations can be shown. But neither is this the time, you know, for fishing expeditions. And (trn. pg. 21, ln. 17-20) I have a feeling there is probably another side to the story, too. I won't ask them for that other side at this moment, but I understand how these things work".

Judge Flannagan quashed all of the Subpoenas with the exception of the Subpoena for the Court Report Tapes, which he directed to be sealed and delivered to

the Clerk, where they would be held for safe keeping until further Order of the Court (Apendix D) stating that (Trn. pg. 17, ln 21-25)

> "The other Subpoenas Duces Tecum to Allstate, in the ordinary course of litigation, the Allstate investigatory files would not be something subject to discovery.

Tapes of the trial were produced and found to be radical (Appendix R). Tapes of Mr. Wyatt's deposition were never produced and were somehow covered up.

Mr. Wyatt, after having a nervous breakdown, was charged thirty-five hundred dollars ($3500.00), in advance, by attorney, Joe Bounds, to "assist" in arguing M.T.S.A. At said argument, Ms. Thomas, and Allstate jointly argued for Ms. Thomas, Mr. Proffit, and Allstate (Appendix C),

During the hearing, Mr. Wyatt, after realizing that he was being abandoned,

sold out by Mr. Bounds, Mr. Wyatt terminated Mr. Bounds, who refused to step aside, and attempted to represent his own interest, or rehire Mr. Hutton, who was present as a witness, but was refused by Judge Flannagan, who allowed Mr. Bounds to continue to abandon (M.T.S.A. trn. pg. 36, ln. 13-pg. 38, ln. 3):

> THE COURT: "If you do not have counsel, then in all candor, the corporation is the party that is here, not you as an individual. It is the corporation that is here, and you are not authorized to practice law on behalf of the corporation. So if your counsel wishes to call you to testify, I will permit him to do so; otherwise, on reflection, I am going to ask you to have a seat, please sir."
>
> MR. WYATT: "Well, Your Honor, I have got this paper I'd like for you to read here, it is in reference to that. I have been allowed to represent myself, Wyatt Mining, Incorporated, all along, but now I can see that my attorney has no intention of putting any testimony on. I see he has no intention of introducing the tapes that you ordered yourself to be heard in this court before you."

THE COURT: "Just a minute. This is a letter from your attorney. I, frankly, don't want to see it. That is between you and your attorney."

MR. WYATT: "And you yourself ordered in about two or three different orders that you personally asked me to come before you, you wanted to hear tapes which will prove perjury, and one of the grounds on this for retrial is perjury, and I am not, maybe I am using it awful freely, but there is proof right here that it happened and from talking to him, there's three witness that were summonsed and that the tapes that you personally ordered in writing and verbally are not intended to be used today for the purpose of, as I stated before, and I am not afraid to say it now, openly of conspiracy."

THE COURT: "All right, sir, if you will, have a seat seat now, please, sir. Let the court make the record clear that the question of "perjury" were previously brought up and the court did direct that the original tapes of the Court Reporter be kept in the Clerk's office for such use as may be appropriate. And, of course, as to what is appropriate is certainly counsel's call in that regard in pursuing any of these motions."

(M.T.S.A. trn. pg. 43, ln. 14-pg. 44, ln. 18):

MR. WYATT: "Your Honor, I'll speak to the letter I am referring to, it's nothing I wrote, it's what this lawyer wrote, I wish to advise the court--."

THE COURT: "Mr. Wyatt, just a moment, sir. Is that the letter from your attorney?"

MR. WYATT: "To assist in representation, to assist."

THE COURT: "All right. Well, Mr. Wyatt, it is clear that the president of a corporation or any individual is not authorized to represent the corporation."

MR. WYATT: "If it means anything, I object."

THE COURT: "I understand, sir. Your objection is noted."

MR. WYATT: "I object for Wyatt's Mining, Incorporated. I object to the whole proceeding."

THE COURT: "It is noted, and I am sure that the appellate court will be happy to consider whether the court was action properly."

(M.T.S.A. trn. pg 49, line 2 thru 14):

MR. WYATT: "I object for Wyatt Mining, Incorporated, as the president of Wyatt Mining, Incorporated. May I not appeal now?"

THE COURT: "You will need to talk

with your attorney regarding the proceedings."

MR. WYATT: "I don't have an attorney at this time."

THE COURT: "The court is not in position to give you legal advice, Mr. Wyatt."

MR. WYATT: "I don't have an attorney at this time."

THE COURT: "You do have an attorney at this time. Mr. Bounds is the attorney of record (Appeal err 10 arg. J)."

Mr. Hutton, Mr. Wyatt's former counsel, who had been subpoenaed to testify, attempted to address the Court (M.T.S.A. trn. pg. 43, line 3 thru 12):

MR. HUTTON: "Your Honor, I know this is unusual, but as an attorney and officer of this court, and the attorney representing Mr. Wyatt, one thing that I feel should be addressed, and it is very briefly, and I know it is unsual, and I will take it up with you in chambers."

THE COURT: "Well, it is, Mr. Hutton, and I am sorry, you are not counsel. I have opened the doors for comments and input from sources that, perhaps, the court should not have, and I am shutting the door (Appendix Q)."

Mr. Bounds abandoned err 4, after discovery evidence (M.T.S.A. trn. pg. 14, line 2 thru 4):

> MR. BOUNDS: "As to grounds number four, as counsel for the plaintiff at this hearing, I choose to abandon any arguments on that (Appendix P) (Appeal err 6, arg. F."

Mr. Bounds abandoned err 4 (M.T.S.A. err 7, trn. pg 21, line 5-10):

> MR. BOUNDS: "Your Honor, then there is number seven which is, basically, the catchall ground of that the evidence was contrary to the law, that the jury verdict was contrary to the law and the evidence in the case, and I can assure you that the Supreme Court doesn't do very well with that one when they--so I will abandon that (Appendix P) (Appeal err 10, arg. J)."

An order had already been prepared and was being circulated before Court had made rulings (M.T.S.A. trn. pg. 49, ln. 15 thru 21):

> THE COURT: "Mr. Mc. McElroy--. You do have an attorney at this time. Mr. Bounds is the attorney of record. I will ask if you will prepare an appropriate order."

MR. McELROY: "It is being circulated."

MR. HUMPHREYS: "We have an Order right here."

Said Order was entered on this day, January 16, 1990, in favor of both defendants, Thomas and Proffit. Judge Flannagan signed for Wyatt Mining as being objected to.

On January 30, 1990, Wyatt Mining Equipment Inc., by Edward R. Wyatt, filed Re Motion To Set Aside Verdict Or Award A New Trial, Notice that the M.T.S.A. transcript was filed, and a request that Judge Flannagan disqualify himself from above styled case. Said motion and request was denied by letter, dated January 31, 1990, by Judge Flannagen and in said letter he so stated that:

> "I do not anticipate the trial court taking any further action regarding this case unless otherwise directed by the appellate court."

Wyatt Mining Equipment Inc. by Edward R. Wyatt filed Notice of Appeal from said decree on February 13, 1990. On February 22, 1990, Objection To Transcript of the trial was filed on the grounds that it was radical, stating eighteen (18) most drastic discrepancies. On March 6, 1990 Mr. Wyatt received a letter from Judge Flannagan stating:

> "Gentlemen, I have received the recent correspondence regarding this matter. I remain of the opinion that Mr. Wyatt is not entitled to prepare and file pleadings on behalf of Wyatt Mining Equipment, Inc. See Rule 6.1-1 of the Rules of the Supreme Court of Virginia, 221 Va. 384 et seq. and particularly UPR 1-101(B) at p. 386."

On July 12, 1990, Edward R. Wyatt filed a complaint against Judge Flannagan, attorneys, and court reporters. On August 2, 1990, Mr. Wyatt received an Opinion from the Assistant Clerk of The Virginia Supreme Court that Wyatt Mining Equipment, Inc. v. Robin S. Thomas, et al had been

refused. That there was no reversible error. Although Mr. Wyatt requested oral argument by telephone, he was not allowed to do so, nor was he notified that his appeal was being argued. On August 2, 1990, Mr. Wyatt telephoned the Clerk, and the office of the Chief Justice and was told by both offices that Court was not in session on July 31, 1990.

REASONS FOR GRANTING THE PETITION

This case presents important questions of public interest that should be answered by this Court. The Court, and Officers of The Court are bound by Laws, Codes, and Rules that they have given oath to abide by. To abuse these, and the Constitutional Rights are against all Accepted Norms of Social Conduct.

The Courts ruling that the "sole" owner of a corporation is not a party in

interest, and has no right to defend when it is being taken by "misconduct" is contrary to the Law and the Constitution of The United States. The Fifth Amendment guarantees that "nor be deprived of life, liberty, or property without due process of law."

7 Am Jur 2d ss57. In support of a holding that a misrepresentation was immaterial, it has been asserted that the right of the named insured to recover on a policy of automobile liability insurance stems from his ownership of the car, but from the fact that he has been legally charged with an obligation for which he is liable. "Mid-States Ins. Co. v. Brandon, 340 III App. 470, 92 NE 2d 540; Hunt v. Century Indem. Co., 58 RI 336, 192 A799, 112 ALR 902".

16 A Am Jur 2d ss583. What is property, generally - The word "property" in the Fourteenth Amendment embraces all

valuable interests which a man may possess outside of himself - outside of his life and liberty. It is more than the mere thing which a person owns; it includes the right to acquire, use, and dispose of it, and the Constitution protects these essential attributes. It relates not only to those tangible things of which one may be the owner, but to everything which he may have an exchangable value.

The Fourteenth Amendment guarantees that "nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

American Jurisprudence 2d. 15 Civil Rights: The due process clause was intended in addition to other guaranties of private rights, to give increased security against orbitrary deprivation of life or liberty, or the arbitrary

spoilation of property.

Section 242 of 18 U.S.C.S. is concerned with deprivation of rights guaranteed by federal law or the Constitution. United States v. O'Dell (CA6 Tenn) 462 F2d 224.

For the Court to allow all parties, and parties with interest in this action to "join against" was in violation of the due process clause of the Fourteenth Amendment. Conflict of Interest[s]: "A situation in which regard for one duty leads to disregard of another" 463 F. 2d 600, 602, or might be reasonably be expected to do so.

Civil Right 13.8 - Conspiracy - If ... two or more persons conspire for the purpose of impeding, hindering, obstructionary or defeating, in any manner, the due course of justice in any State or Territory, with intent to deny to any citizen the equal protection of the

laws,...C.A. Va. 1977. A conspiracy may be demonstrated by circumstantial evidence alone. Joyner v. U.S., 547 F.2d 1199. C.A.Va. 1970. Where conspiracy has been found, act of one conspirator becomes act of other, present or about, if performed in furtherance of domination. U.S. v. McGowan, 423 F.2d 413. C.A.Va. 1968. Each member of conspiracy is chargeable with acts performed by other members in furtherance of conspiracy. C.A.Va. 1977. Once a conspiracy is established, it is presumed to continue until its termination is affirmatively shown. Joyner v. U.S., 547 F.2d 1199.

There is no constitutional principle that prohibits a court from protecting the entegrity of its processes of forbiding lawyers to intentionally creat grave due process problems by statements and comments concerning pending litigation. Constitutional Law restricts

lawyers comments about pending litigation where the comments to these instances pose a serious and imminent threat to a fair trial.

American Jurisprudence 2d - Automobile Insurance - ss 58. Effect of Certificate of title or name in which vehicle is registered. Although the motor vehicle is registered or a certificate of title thereto has been taken, in the name of one other than the insured, it has been held in a number of cases that the insured may nevertheless, under a sole and unconditional ownership clause in an automobile property insurance policy, be deemed to be such an owner, if such is the fact. In the case of liability insurance, a title certificate has been held not conclusive evidence of ownership, so that the sole ownership provision of the policy was not violated where the insured was the sole owner but title was taken in the name

of an employee as a matter of convenience.

Annotation: 71 ALR 2d 271 ss 3(b). United States Casualty Co. v. Bain, 191 Va. 717, 62 SE2d 814. Kietlinski v. Interstate Transport Liners, 3 Wis 2d 451 88 NW 2d 739, the court characterizing the managers interest as at most an equitable interest and stating that since the vehicle were registered in the name of the coporation a presumption was created that it was the owner and that such presumption had not been rebutted by the insuured.

Contributory negligence. 7A Am Jur 2d (Rev) Automobiles and Highway Traffic ssss 422-424. Instruction as to negligence of plaintiff. 8 Am Jur 2d (Rev) Automobiles and Highway Traffic ss 1110. Form 1612 Matter of defense. It is not necessary for plaintiff to prove that ----------(he or she) was not guilty of contributory negligence. Contributory

negligence is a matter for the defense to prove.

Writ of habeas corpus would be issued together with certiorori to clerk of circuit court to certify record by which cause of commitment could be examined. Ex Parte Burford (1806) 7 US 448, 2 L Ed 495. Supreme Court would grant certiorori where diminition of record was shown. Clark v. Hackell (1862) 66 US 77, 17 L Ed 69. Certiorori would issue for omissions in record. Sterns v. United States (1866) 71 US 1, 18 L Ed 451.

An aggrieved party is on who has been injured, who has suffered a loss; "a party or person is aggrieved by a judgment, order, or decree whenever it operates prejudicially and directly upon his property, pecuuiary, or personal rights." 223 S.W. 2d 841, 845.

16 A Am Jur. 2d, ss 583. The word "property" in the Fourteenth

Amendment embraces all valuable interest which a man may posses outside of himself - outside of his life and liberty. It is more than the mere thing which a person owns; it includes the right to acquire, use, and dispose of it, and the Constitution protects these essential attributes. Section 242 of 18 U.S.C.S. is concerned with deprivation of rights guaranteed by federal law or the Constitution. United States v. O'Dell (CA 6 Tenn) 462 F 2d 224.

That relationship with a person or thing that will support the issuance of an insurance policy. "A person is usually regarded as having an insurable interest in the subject matter insured when he will derive pecuniary benefit or advantage from its preservation, or will suffer pecuniary loss or damage from its destruction..." "255 S.W. 2d 990, 991. Ownership or other possessory interest is not necessary, 54

So. 2d 764; so long as there is a reasonable expection of pecuniary advantage. 15 P. 2d 483.

American Jurisprudence ss 58.

Although the motor vehicle is registered or a certificate of title thereto has been taken, it has been held in a number of cases that the insured may nevertheless, under a sole and unconditional ownership clause in an automobile property insurance policy, be deemed to be such an owner, if such is the fact. In the case of liability ipsurance, a title certificate has been held not conclusive evidence of ownership.

Uninsured mctorist carrier is not a party defendant within 28 U.S.C. ss 1441, the federal removal statute, in the initial action based on the automobile accident. (Zurenda v. Holloman, 616 F. Supp. 212 C.E.D. Va. 1985).

7 AM. Jur. 2d. ss 57. In support

of a holding that a misrepresentation was immaterial, it has been asserted that the right of the named insured to recover on a policy of automobile insurance stems from his ownership of the car, but from the fact that he has been legally charged with an obligation for which he is liable. Mid-States Ins. Co. v. Brandon, 340 III App 470, 92 NE 2d 540; Hunt v. Century Indem. Co., 58 RI 336, 192 A799, 112 ALR 902.

7 Am. Jur. 2d ss 389. Under the provisions of the usual or standard automobile liability insurance policies, the insurer, in line with its right to settle claims against the insured which are within the coverage of the policy and its right under the policy to the exclusive control over litigation against the insured, ss 381 et seg., Supra, is bound by the provisions of the policy issued by it to defend the "insured"

against all actions brought against him which are, judging by the allegations in such actions, ssss 391, 392, Infra, within the coverage of the policy, even if any of the allegations of the suit are groundless, false, or fraudulent. Sims v. Illinois Nat. Casualty Co. 43 Ill. App. 21 184, 193 N.E. 2d 123.

An automobile liability insurer has an obligation to defend regardless of the merit of the claim, where the policy contains an exclusive control of defense provision. Cook V. Ohio Casualty Ins. Co. (Tex Civ. App 6th Dist) 418 SW 2d 712.

Am Jur 2d ss 396. 68. An automobile liability insurer's duty to defend is determined from the allegations on the complaint and not on the facts ultimately established in the injury action. Burton v. State Farm Mut. Auto. Ins. Co. (CA5 Fla) 335 F 2d 317.

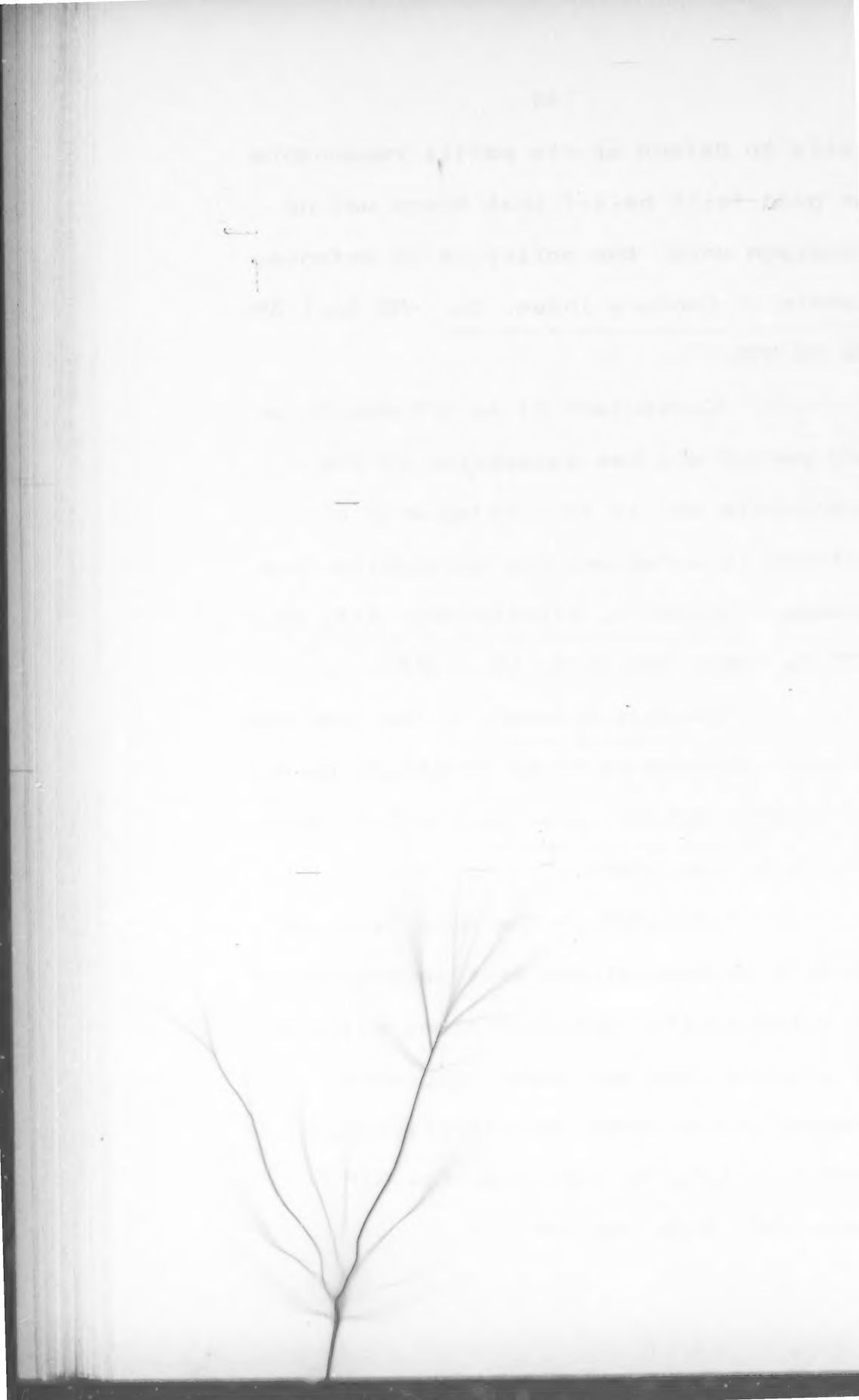
An automobile liability insurer

fails to defend at its peril; reasonable or good faith belief that there was no coverage under the policy is no defense. Landie v. Century Indem. Co. (MO App) 390 SW 2d 558.

"Custodian" of an automobile is any person who has possession of the automobile who in fact safeguards or intends to safeguard the automobile from damage. Gordon v. Liberty Mut. Ins. Co., 675 F. Supp. 321 (E.D. Va. 1987).

"Omnibus Clause". - The "omnibus clause" statute is to be construed Gordon v. Liberty Mutual. Ins. Co., 675 F. Supp. 321 (E.D. Va. 1987).

"Include". - The word "include" in this section allows that permission of an automobile's custodian alone suffices to provide coverage under insurance company's non-owned vehicle provision. Gordon v. Liberty Mut. Ins. Co. 675 F. Supp. 321 (E.D. Va. 1987).



It does not make the owner of an automobile liable for the negligence of another simply because such negligent party was operating the car with his permission. Lumbermens Mut. Cas. Co. v. Indemnity Ins. Co. of N. Am., 186 Va. 204, 42 S.E.2d 298 (1947).

Beneficiary Is Anyone Injured. - In Virginia anyone injured by the negligence of the insured under the policy is a beneficiary of the policy. Davis v. National Grange Ins. Co., 281 F. Supp. 998 (E.D. Va. 1968).

The Issue Under This Section Is Not One Of Agency But One Of Permission - a pointedly different thing. When an owner entrusts his vehicle to another, to use for the bailee's own purposes, the owner is not liable for the bailee's negligence, because there is no relation of agency between them. The bailee, however, is covered under the omnibus clause of the

insurance policy because it does not require the existence of an agency, but merely that the bailee shall have acted with the permission of the insured owner. Utica Mut. Ins. Co. v. Rollason, 246 F.2d 105 (4th Cir. 1957).

The Permission "expressed Or implied". - Permission to do a specific thing in not permission to do all things. Sordelett v. Mercer, 185 Va. 823, 40 S.E. 2d 289 (1946); State Farm Mut. Auto. Ins. Co. v. Cook, 186 Va. 658, 43 S.E. 2d 863 (1947); liberty Mut. Ins. Co. v. Tiller, 189 Va. 544, 53 S.E. 2d 814 (1949); etc.

The burden of proof is on the party alleging express or implied permission given by a named insured for another driver to operate an automobile. Liberty Mut. Ins. Co. v. Mueller, 432 F. Supp. 325 (W.D. Va. 1977), aff'd, 570 F. 2d 508 (4th Cir. 1978).

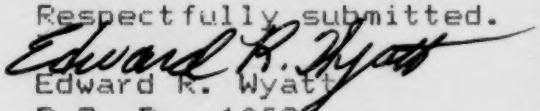
Issue Of Implied Permission For

Jury. Where a bailor gives express permission to a bailee, within a social context, to operate an automoblle, and does not give specific limiting instructions, the jury is empowered to decide whether, under all the circumstances, the bailee also has implied permission to use the automobile for a personal errand or other social purposes not utterly inconsistent with the purposes of the bailor. Emick v. Dairyland Ins. Co., 519 F.2d 1317 (4th Cir. 1975).

CONCLUSION

The petition for a writ of certiorari should be granted for the benefit of public interest.

Respectfully submitted.



Edward R. Wyatt
P.O. Box 1062
Marion, Va. 24354

DATED: November 26, 1990

APPENDIX A

SUPREME COURT OF THE UNITED STATES

No. A-295

Wyatt Mining Equipment, Inc.,

Petitioner

v.

Robin S. Thomas, et al.

O R D E R

UPON CONSIDERATION of the application of counsel for the petitioner,

IT IS ORDERED that the time for filing a petition for a writ of certiorari in the above-entitled case, be and the same is hereby, extended to and including November 28, 1990.

/s/ William H. Rehnquist

Chief Justice of the United States

Dated this 22nd day of October, 1990.

APPENDIX B

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Tuesday the 31st day of July, 1990.

Wyatt Mining Equipment, Inc.,

Appellant,

against Record No. 900444

Circuit Court No. L-1840

Robin S. Thomas, et al.,

Appellees.

From the Circuit Court of Smyth County

Upon review of the record in this case and consideration of the argument submitted in support of and in opposition to the granting of an appeal, the court is of opinion there is no reversible error in the judgment complained of. Accordingly, the Court refuses the petition for appeal.

A Copy,

Teste:

David B. Beach, Clerk

/s/ A Ossi

By: _____
Deputy Clerk

APPENDIX C

TRANSCRIBED M.T.S.A. HEARING OF JANUARY 16, 1990

Opinion & Order

VIRGINIA:

IN THE CIRCUIT COURT OF SMYTH COUNTY

WYATT MINING EQUIPMENT, INC.,

Plaintiffs,

VS.

ROBIN S. THOMAS, ET AL.,

Defendants.

APPEARANCES:

JOSEPH P. BOUNDS, ESQUIRE
Suite 710, Dominion Bank Building
Roanoke, Virginia 24011,

Counsel for Plaintiffs.

JAMES N. L. HUMPHREYS, ESQUIRE,
Abingdon, Virginia,
AND HOWARD C. McELROY, ESQUIRE,
Abingdon, Virginia,

Counsel for Defendants.

THE COURT: All right, in the matter of Wyatt Mining Equipment,

Incorporated, v. Robin Thomas and Michael Proffit, we are here on motions to set aside the verdict of the jury in this case, the jury that was scheduled, let's see, that was conducted September 20, 1989.

THE COURT: All right, with respect to the motion to set aside the verdict, the court is going to deny the motion. The default judgment ground, frankly, is the one that is of most concern to the court, and I recognize argument to be made on behalf of the plaintiff in this proceeding, and recognize that it has some appeal; however, the court denies the motion on that ground.

I believe the statutory provision, 38.2-2206, as I recall, gives the uninsured motorist carrier the right to defend a proceeding against an uninsured motorist carrier in its own

name.

The law is clear that if a judgment goes down against an uninsured motorist, then, contractually, the uninsured motorist carrier is responsible for the amount of that judgment if it is inconsistent and inconceivable in the mind of the court that such a statutory scheme would permit the defense by the uninsured motorist carrier and a judgment against the uninsured motorist.

Further, as was indicated, the, as filed, as the record will show, it is clear that the change in midstreme from the claim of Ed Wyatt to Wyatt Mining Equipment, Incorporated, as "Mr. McElroy" has pointed out, the motion for default in the technical status of those pleadings create an unusual situation.

With respect to Mr. Proffit, the law is also clear, I believe, that, I believe the case that comes to mind is one

where a demurrer would have been sustainable and the court found that a default judgment was not appropriate where a demurrer was sustainable, and certaintly, the court had made the determination that Mr. Wyatt, individually, had no claim for these damages, and it would not have been appropriate for Mr. Wyatt under those circumstances to have recovered a default judgment against someone for damages for which it was clear he had no claim.

With respect to the motion in limine that is referred to in ground number two to restrict the cross examination, the court will certify for the record that the motion was made and the matter discussed in chambers. There was some discussion about, perhaps, indentifying this witness as an accident investigator or something of that nature, short of identifying her with an insurance

carrier. I don't believe that that was done, in fact, and no one was obligated to do so. The court feels it was correct in the ruling at that time.

Ground number three, the DMV record or the, I don't recall if it was a DMV -- Exhibit No. 4 for identification -- odometer mileage statement it is called, it is apparent to the court now and at the day of trial that this is a Xerox copy of something called an odometer and mileage statement.

It is not certified by any, by anyone, whether an official of a government agency or anyone else, simply a Xerox copy of an odometer and mileage statement.

The court was then and is now of the opinion that a foundation had not been laid to admit that as an exhibit in evidence.

With respect to ground number

five, that is, the negligent entrustment, the court was then and is now of the opinion that there simply is not evidence of entrustment to Michael Proffitt of this vehicle by Robin Thomas.

There simply is no evidence. The burden is upon the plaintiff to show that.

With respect to number six, ground number six, contributory negligence and assumption of the risk instructions, of course, on the one hand the plaintiff is alleging negligent entrustment on the part of Robin Thomas, and on the other hand is indicating that, Robin Thomas could be guilty of negligent entrustment, that is not an appropriate theory for the defendants -- for the plaintiff -- and, in fact, while the court may have resolved these issues somewhat differently, the court was of the opinion that there was an evidence that Mr. Wyatt knew of the condition of Michael Proffit and knew of

his propensity to, with respect to driving, and had no desire, as expressed by Mr.Wyatt, for that to happen, and yet, in view of the evidence of his knowledge of that and evidence, it was not a question of whether the court accepts it; it is a question whether the factfinder accepts that evidence, evidence that he knew or should have known that that would lead just to the situation that occurred, that is, an accident and damages resulting.

I am of the opinion that under the record as a whole, it was for the factfinder to determine whether or not the plaintiff would be barred from recovery on those grounds, and whether or not Mr. Wyatt understands or wishes to accept the fact, a jury of seven persons heard his evidence and heard the evidence of other witness and not the court and not the attorneys but a jury of seven persons made

their decision that Wyatt Mining was not entitled to recover in this case.

As far as this court is concerned, I believe that that was within the bounds of their discretion to make that decision. They made that decision.

I find no reversible error in that decision and will deny the motion to set aside.

And I take no personal offense if Wyatt Mining wishes for this matter to be review by the Supreme Court of Virginia, and I say that in response to the statements made by Mr. Wyatt here today and otherwise.

So there is a place for this to be reviewed, and if he feels he has been devied justice, then that is where it should be reviewed.

VIRGINIA:

IN THE CIRCUIT COURT OF SMYTH COUNTY

WYATT MINING EQUIPMENT, INC.,	)	
Plaintiff,	)	AT LAW
v.	)	Law No.: 1840
ROBIN S. THOMAS, et al,	)	
Defendants.	)	

FINAL ORDER

On this day, this case was brought before the court, pursuant to notice, for entry of final order.

By an order deted October 10, 1989, the court granted summary judgment in favor of defendant Thomas, and granted judgment in favor of defendant Proffit pursuant to the jury's verdict.

Plaintiff filed post-trial motions and such motions were argued at a hearing on January 16, 1990.

The court is of opinion that the post-trial motions should be denied.

Accordingly, the court ORDERS that this action will be, and is hereby, dismissed with prejudice as to all the parties and issues in controversy.

The clerk is directed to send an attested copy hereof to counsel of record, to Michael Anthony Proffit, and to plaintiff.

ENTERED this 16th day of January, 1989.

/s/ Charles B Flannagan

Judge

REQUESTED:

PENN, STUART, ESKRIDGE & JONES
P.O. Box 2288
Abingdon, VA 24210

By: /s/ James N. L. Humphreys

Counsel for Robin S. Thomas

WHITE, ELLIOT & BUNDY
P.O. B429
Abingdon, VA 24210

By: /s/ Howard C. McElroy

Counsel for Allstate Insurance Company

MICHAEL ANTHONY PROFFIT
c/o Nellie Davidson
Greenhill Subdivision
Chilhowie, VA 24319

/s/ Michael Anthony Proffit

SEEN AND OBJECTED TO:

WYATT MINING EQUIPMENT, INC.
P.O. Box 1062
Marion, VA 24354

Unsigned

By: _____
EDWARD R. WYATT, President

BOUNDS & DORSEY
Suite 710
Dominion Bank Building
Roanoke, VA 24011

By: /s/ Joseph P. Bounds

Counsel for Wyatt Mining
Equipment, Inc.

Supreme Court, U.S.
FILED
FEB 6 1991
OFFICE OF THE CLERK

(2)

No. 90-1133

In The

Supreme Court of the United States

October Term, 1990

EDWARD R. WYATT,

Petitioner,

v.

ROBIN S. THOMAS and
MICHAEL ANTHONY PROFFIT,

Respondents.

Petition For Writ Of Certiorari To The Circuit Court Of Smyth County, Virginia

BRIEF IN OPPOSITION OF RESPONDENT ROBIN S. THOMAS

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OR CALL COLLECT (402) 342-2831

LIST OF PARTIES AND RULE 29.1 LIST

The petitioner in this case is Edward R. Wyatt. The respondents are Robin S. Thomas and Michael Anthony Proffit.

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Respondents.

Petition For Writ Of Certiorari To The Circuit Court Of Smyth County, Virginia

BRIEF IN OPPOSITION OF RESPONDENT ROBIN S. THOMAS

OPINIONS BELOW

There are no reported opinions below.

STATEMENT OF THE CASE

This action arose out of a motor vehicle accident which occurred at or about 10:00 p.m. on Saturday, October 31, 1987 on U.S. Route 11 in Smyth County, Virginia.

As a result of the accident, a suit for property damage was brought by Edward R. Wyatt (Wyatt) personally against Robin S. Thomas (Thomas) and Michael Anthony Proffit (Proffit) in the Circuit Court of Smyth County, Virginia. The Virginia Mutual Insurance Company (Virginia Mutual), the insurer of Thomas, and Allstate Insurance Company (Allstate), the alleged uninsured motorist carrier for Wyatt, were also served with process.

At the time Wyatt's Motion for Judgment was filed, he was represented by Thomas G. Hodges, Esq. Wyatt's pleading alleged that on October 31, 1987, he gave permission to Thomas to drive "his" 1985 Lincoln Continental but advised her not to let Proffit drive the vehicle. Wyatt further alleged that Thomas, "despite plaintiff's instructions to the contrary", allowed Proffit to drive the automobile. Proffit was subsequently involved in the accident mentioned above which resulted in considerable damage to the vehicle.

Grounds of Defense were filed by Thomas, admitting that Proffit was driving the "plaintiff's vehicle" at the time of the accident, denying that the automobile accident was in any way attributed to any negligence on her part and expressly averring that Wyatt assumed the risk of damage to his property because he was guilty of negligence which proximately caused the accident. Grounds of Defense were also filed by Allstate pursuant to Va. Code Ann. § 38.2-2206 but not by Proffit.

By order entered March 14, 1989, Thomas G. Hodges, Esq., was withdrawn as counsel and David J. Hutton, Esq., was entered as attorney of record for Wyatt.

A Motion for Summary Judgment dated March 15, 1988 was filed by Thomas. The motion was based upon the fact that Wyatt did not own the damaged automobile for which he sought compensatory damages. Subsequently, Wyatt filed a Motion to Add Party Plaintiff, a Motion for Leave to Amend Motion for Judgment and a Motion for Default Judgment against Proffit. A Motion for Summary Judgment was also filed by Allstate against Wyatt on his claim against Proffit.

On May 2, 1989, all parties presented evidence and argued the respective motions before Judge Charles B. Flannagan, II. By order entered May 22, 1989, Judge Flannagan granted Wyatt's Motions to Add Party Plaintiff and For Leave to Amend Motion for Judgment and denied Wyatt's Motion for Default Judgment. In addition, Thomas' and Allstate's Motions for Summary Judgment were granted and both defendants and Allstate were given twenty-one (21) days from service to file responsive pleadings to the Amended Motion for Judgment. (Petitioner's Appendix F) *No appeal was taken by Wyatt after summary judgment was entered against him.*

An Amended Motion for Judgment styled *"Wyatt Mining Equipment, Inc.,* Plaintiff v. Robin S. Thomas and Michael Anthony Proffit, Defendants" (emphasis added) was filed and Grounds of Defense were filed by Thomas and Allstate.

The jury trial of the matter was held on September 20, 1989. Opening statements were made by counsel for Wyatt Mining and for Thomas. Counsel for Wyatt Mining Equipment, Inc. (Wyatt Mining) presented his evidence and rested. Counsel for Thomas and counsel for Allstate

then moved the Court to strike Wyatt Mining's evidence against Thomas and Proffit, respectively. The Court granted the motion to strike the evidence against Thomas, entering summary judgment in her favor, and denied the motion to strike the evidence against Proffit. The Court's decision to strike the evidence against Thomas was based upon the fact that Wyatt Mining presented no evidence during the trial which indicated that Thomas entrusted the involved vehicle to Proffit. Proffit and counsel for Wyatt Mining presented additional evidence and rested. The Court instructed the jury and Proffit and counsel for Wyatt Mining made their closing arguments. The jury deliberated and returned a verdict in favor of Proffit. An order to this effect was entered on October 10, 1989. (Petitioner's Appendix E)

A Motion to Set Aside Verdict or Award a New Trial was filed by Wyatt Mining. A hearing regarding the motion was held on October 31, 1989. Pursuant to his motion presented at that time, David J. Hutton, Esq., was allowed to withdraw as counsel for Wyatt Mining and the hearing was continued until November 29, 1989.

Subsequent to the withdrawal of David J. Hutton, Esq., as counsel for Wyatt Mining, Wyatt, the president of Wyatt Mining, assumed the "legal representation" of Wyatt Mining.

On November 29, 1989, a hearing was held on Wyatt Mining's Motion to Set Aside Verdict or Award a New Trial. Wyatt orally requested additional time to obtain an attorney to represent Wyatt Mining. The request for continuance was granted and an order to this effect was

entered by the court on January 2, 1990. Wyatt subsequently retained Joseph P. Bounds, Esq., to represent Wyatt Mining.

Wyatt Mining's post-trial motions were argued in a hearing before Judge Flannagan on January 16, 1990. A Final Order was entered on January 16, 1990 denying all of Wyatt Mining's post-trial motions and dismissing the action as to all parties with prejudice. (Petitioner's Appendix C)

Wyatt, after dismissing Joseph P. Bounds, Esq., as counsel of record for Wyatt Mining, filed another Motion to Set Aside Verdict or Award a New Trial on January 30, 1990. Concurrently, a letter was mailed to Judge Flannagan by Wyatt "moving" that he disqualify himself from any further proceedings in the case.

By letter dated January 31, 1990, Judge Flannagan informed Wyatt that he (Wyatt) was not authorized to prepare and file or take other actions on behalf of Wyatt Mining. Judge Flannagan also strongly urged Wyatt to seek legal counsel regarding a possible appeal by Wyatt Mining.

Wyatt subsequently filed a "Notice of Appeal" and "Notice of Objection to Transcript." By letter dated March 6, 1989, Judge Flannagan advised Wyatt Mining, counsel for Thomas and counsel for Allstate that Wyatt was not entitled to prepare and file pleadings on behalf of Wyatt Mining and that there were no pleadings filed requiring further action by the court. A "Petition for Appeal" dated April 10, 1990 was then filed with the Virginia Supreme Court on April 11, 1990 by Wyatt as president of Wyatt Mining.

By order entered July 31, 1990, the Virginia Supreme Court refused Wyatt Mining's Petition for Appeal. A Notice of Appeal to the United States Supreme Court and Motion to Defer Issuance Mandate, both dated August 14, 1990, were then filed by Wyatt. An Order deferring issuance of mandate to, and including, October 29, 1990 was entered by the Virginia Supreme Court on September 7, 1990.

On October 11, 1990, Wyatt mailed a petition to this court, requesting a 60 day extension to file a petition for writ of certiorari. An order granting an extension of time within which to file a petition for a writ of certiorari to, and including, November 28, 1990 was entered by this Court on October 22, 1990.

A Petition for Writ of Certiorari was "filed" by Wyatt with this Court on November 28, 1990. The petitioner was Wyatt Mining. By letter from this Court dated December 3, 1990, the petition was refused because it did not meet the form requirements of this Court and because Wyatt, a non-lawyer, was attempting to represent Wyatt Mining.

On January 11, 1991, another petition for writ of certiorari, *substantively identical to the petition "filed" on November 28, 1990 but with the substitution of Wyatt for Wyatt Mining as petitioner,* was "filed" with this Court.

REASONS FOR DENYING THE WRIT

(a) No federal questions exist in the present case and none were raised in the state court proceeding below.

This Court has jurisdiction under Article 3, Section 2, Clause 2 of the United States Constitution to review the

judgments of state courts when a party to the state court proceedings claims that a right or immunity under the laws of the United States has been denied to him. Congress implemented this constitutional grant of jurisdiction by enacting 28 U.S.C. § 1257 which empowers this Court to review certain final judgments or decrees rendered by state courts. However, this Court's jurisdiction to review a state court decision under 28 U.S.C. § 1257, whether by appeal or certiorari, is dependent upon the existence of a federal question in the case. Even assuming that Wyatt was a party to the state court proceedings in question, which he was not, no federal questions exist in the present case.

The questions presented in Wyatt's petition for writ of certiorari are ambiguous and the issues raised are impossible to discern, even with a concurrent comparison to his proposed reasons for this Court's granting of his petition. Therefore, a general but brief review of the substantive state court proceedings below seems the best method to illustrate the obvious lack of a federal question in the present case.

The occurrence giving rise to the case was an automobile accident and resulting property damage. Wyatt brought suit in a Virginia circuit court under state law theories of negligence and negligent entrustment. Summary judgment was subsequently entered against Wyatt because the vehicle involved in the accident belonged to Wyatt Mining, a separate and distinct entity. No appeal of the summary judgment ruling was taken by Wyatt.

An amended motion for judgment was filed by Wyatt Mining, alleging the same operative facts as the original

motion for judgment (with the exception of the vehicle's ownership) and pleading identical state law theories of liability. Trial of the matter was held on September 20, 1989. At the conclusion of the plaintiff's evidence and in response to a motion made by Thomas, the trial court struck the evidence against Thomas and entered summary judgment in her favor. The motion to strike and summary judgment were granted by the court because no evidence of negligent entrustment by Thomas was introduced by Wyatt Mining. The case against Proffit, on a state law negligence theory, went to the jury. After conducting their deliberations, the jury returned a verdict in favor of Proffit.

After several post-trial motions based entirely on state law were filed by both Wyatt Mining and Wyatt and hearings were held by the court on the various motions, a final order was entered on January 16, 1990. A notice of appeal was "filed" by Wyatt on behalf of Wyatt Mining and a related petition for appeal was subsequently "filed" by Wyatt on behalf of Wyatt Mining with the Virginia Supreme Court. None of the errors assigned by Wyatt Mining in its petition for appeal had as a basis a federal law issue. The petition for appeal was denied by the Virginia Supreme Court and Wyatt Mining undertook steps to petition this Court for a writ of certiorari.

After Wyatt Mining's petition for a writ of certiorari was rejected by this Court, Wyatt filed an identical petition with *himself* as petitioner. Although he now alleges various Fourteenth Amendment issues, it is quite apparent that his grounds for the granting of a writ of certiorari are but vague reincarnations of prior state law claims, thinly veiled in Fourteenth Amendment clouds.

It is well accepted that this Court will not review a decision of a state court, on appeal or through the discretionary granting of a writ of certiorari, when the underlying basis of the decision rests upon adequate and independent non-federal grounds. *Bell v. Maryland*, 378 U.S. 226, 12 L.Ed.2d 822, 84 S.Ct. 1814 (1964), *Smith v. Smith*, 366 U.S. 210, 6 L.Ed.2d 233, 81 S.Ct. 1050 (1961), *Radio Station WOW, Inc. v. Johnson*, 326 U.S. 120, 89 L.Ed. 2092, 65 S.Ct. 1475 (1945). Additionally, in order to obtain a review of a state court decision in this court pursuant to 28 U.S.C. § 1257, it must affirmatively appear from the record of the case that a substantial federal question was presented to the state court and ruled upon by that entity. *Webb v. Webb*, 451 U.S. 493, 68 L.Ed.2d 392, 101 S.Ct. 1889 (1981), Sup. Ct. R. 14.1(h).

From a review of the record in the present case as well as a consideration of the foregoing facts, applicable law and argument, it is obvious that the present case is devoid of any federal questions of law and that none were in fact raised in the state court proceedings below.

(b) As to Wyatt, no final judgment or decree has been rendered by the Virginia Supreme Court and his time for appeal has expired.

The review jurisdiction of this Court, delineated by the express provisions of 28 U.S.C. § 1257, depends upon the existence of a final judgment or decree rendered by the highest court of the state in which a decision could be had. If the judgment, though final, was not rendered by the highest court of the state in which a decision could be had, this Court cannot review the judgment.

Summary judgment was entered against *Wyatt* by order of the Smyth County Circuit Court entered May 22, 1989. Pursuant to the relevant provisions of Va. Code Ann. §§ 8.01-670 and 8.01-671, Wyatt had three months in which to file a petition for appeal with the Virginia Supreme court seeking appellate review of the summary judgment ruling. No petition for appeal arising out of the trial court's order of May 22, 1989 has ever been filed by Wyatt.

Wyatt as petitioner has irreversibly failed to exhaust all his opportunities for review by the courts of the Commonwealth of Virginia and has thus foreclosed any possibility of this Court granting his petition for writ of certiorari. For this Court to now grant Wyatt's petition for a writ of certiorari would be to assume that review by the Virginia Supreme Court would have been denied when in fact Wyatt elected not to pursue such a review.

(c) Wyatt has no standing to raise issues before this Court arising out of prior state court decisions in actions to which he was not a party.

Wyatt was dismissed as a party to the present suit when summary judgment was entered against him on May 22, 1989. Subsequently, Wyatt Mining was substituted as the sole party plaintiff. No appeal was taken by Wyatt as a result of the May 22, 1989 order.

To obtain relief in this Court, a complainant must show that the enforcement of a state court judgment will deprive him, as distinguished from others, of some federal right. *Liberty Warehouse v. Burley T.G. Co-Op M. Asso.*, 276 U.S. 71, 72 L.Ed. 473, 48 S.Ct. 291 (1928). Thus, even

assuming that the recent *filing* of the involved petition by Wyatt is valid, he is simply not the proper party in interest.

It is undisputed that the actual case below involved only Wyatt Mining as a party plaintiff. As reflected by the record and discussed at length elsewhere in this brief, no federal questions are involved in the present case and no such federal issues were raised in the court proceedings below. In other words, neither Wyatt, the current petitioner, nor Wyatt Mining raised a federal question in the state court proceedings. Furthermore, even if Wyatt Mining had raised a federal question in the state court proceedings, Wyatt would be precluded from relying on the federal question issue raised by Wyatt Mining and could not now invoke the appellate jurisdiction of this Court to assert the rights of Wyatt Mining. *Hanson v. Denckla*, 357 U.S. 235, 2 L.Ed.2d 1283, 78 S.Ct. 1228 (1958) reh. den. 358 U.S. 858, 3 L.Ed.2d 92, 79 S.Ct. 10 (1958).

CONCLUSION

It is obvious that the recent petition for writ of certiorari filed by *Wyatt* is but a blatant attempt to circumvent the applicable rules of this Court and evade its prior rulings. Furthermore, even if *Wyatt's* petition were to be considered by this Court, the record of the state court proceedings attest to the complete absence of any involved federal questions and reflect that the underlying state action was final as to Wyatt by order entered May

22, 1989. For the foregoing reasons, this court should deny the Petition for Writ of Certiorari.

Respectfully Submitted,

RICHARD E. LADD, JR.
(Counsel of Record)
PENN, STUART ESKRIDGE & JONES
P.O. Box 2288
Abingdon, VA 24210
Counsel for Robin S. Thomas

February, 1991

Supreme Court, U.S.
FILED
FEB 22 1991
OFFICE OF THE CLERK

(3)

No. 90-1133

In The

SUPREME COURT OF THE UNITED STATES

October Term, 1990

WYATT MINING EQUIPMENT, INC., ET AL

Petitioners,

v.

ROBIN S. THOMAS, ET AL

Respondents.

REPLY BRIEF OF PETITIONER EDWARD R. WYATT

Edward R. Wyatt
P.O. Box 1062
Marion, Virginia 24354
Phone/Fax: 703/783-2247
Pro Se

LIST OF PARTIES AND RULE 29.1 LIST

The parties in the proceeding below were Edward R. Wyatt, Wyatt Mining Equipment, Inc., Robin S. Thomas, and Michael Anthony Proffit.

The petitioner in this case is Edward R. Wyatt, pro se, as a party, and Edward R. Wyatt, pro se, as a party in interest of Wyatt Mining Equipment, Inc.

The respondents, as parties, are Robin S. Thomas and Michael Anthony Proffit.

The respondent, as a party in interest, is Allstate Insurance Company.

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CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Const. Fourteenth Amend. 1-11

28 U.S.C.ss2403.....1-11

No. 90-1133

In The

SUPREME COURT OF THE UNITED STATES

October Term, 1990

WYATT MINING EQUIPMENT, INC., ET AL

Petitioners,

v.

ROBIN S. THOMAS, ET AL

Respondents.

REPLY BRIEF OF PETITIONER EDWARD R. WYATT

OPINIONS BELOW

The Opinion of the Supreme Court of Virginia. (Petition, Appendix B).

The Opinions of the Circuit Court of Smyth County, Virginia. (Petition, Appendix C, D, E, F).

REPLY TO BRIEF IN OPPOSITION OF RESPONDENT ROBIN S. THOMAS

The Statement Of The Case, and the Reasons For Denying The Writ, in the Brief In Opposition of respondent Robin S. Thomas, by counsel, are repetitious, confusing, irrelavent and, as was done in the Courts below, is no more that an attempt to "further" confuse the issues and disrupt this Court.

Pursuant to Rule 15.6 of the Rules of the United States Supreme Court, the petitioner will attempt to reply to the Brief In Opposition of respondent , Robin S. Thomas with a summary of the issues first raised in respondent's brief, which are in conflict, in the manner following and rely on Constitutional and Statutory Provisions cited in the Petition For A Writ Of Certiorari:

The petitioner, Edward R. Wyatt pro se, didn't appeal the ruling of the Court in the Circuit Court of Smyth County, Virginia, of May 2, 1989, entered on May 22, 1989, because he was not allowed to sit in on the hearing, in the judges chambers, and was not advised that he had been dismissed as a plaintiff. Furthermore, the Court's granting of Edward R. Wyatt's Motion For Leave To Amend Motion For Judgment to add Wyatt Mining Equipment, Inc., and Motion To Add Party Plaintiff, and the Order entered on May 22, 1989, styled Edward R. Wyatt, et al, plaintiff, v Robin S. Thomas, et al, defendants allowed him to remain as a party plaintiff. (Petition, Appendix F, G pp. 27a, 31a) (Reply, Appendix H, I, pp. 23a, 25a).

No hearing was ever held, and no Order was ever entered dismissing Edward

R. Wyatt as a party plaintiff, yet, the case went to trial on September 20, 1989 and an Order was entered on October 10, 1989, styled Wyatt Mining Equipment, Inc. vs. Robin S. Thomas and Michael Anthony Proffit, and the Final Order entered January 16, 1989, styled Wyatt Mining Equipment, Inc. vs. Robin S. Thomas, et al, is devoid of Edward R. Wyatt as a party plaintiff. (Petition, Appendix C, E, pp. 4a, 12a, 23a).

Edward R. Wyatt, pro se, is the petitioner as a party and as a party in interest, as the "sole" owner, president, registered agent, secretary, and treasurer of Wyatt Mining Equipment, Inc., in this case which went to the Supreme Court of Virginia styled Wyatt Mining Equipment, Inc. v. Robin S. Thomas, et al, even though the case went to trial in the Circuit Court of Smyth County, Virginia,

and an order was entered, styled Wyatt Mining Equipment, Inc. v. Robin S. Thomas and Michael Anthony Proffit.

A Petition For A Writ Of Certiorari to the Supreme Court of Virginia, application no. A-295, was filed on November 28, 1990, styled Wyatt Mining Equipment, Inc., petitioners, v. Robin S. Thomas, et al, respondents, with Wyatt Mining Equipment, Inc. By Edward R. Wyatt, Pres., and Edward R. Wyatt, as petitioners.

On December 3, 1990, Ms Suzy McDivitt, Assistant Clerk, returned said petition with a letter directing corrections, pursuant to Rules 14.1(K), 33, and 33.2(5). That the Orders and Opinions were misplaced. That the printing was incorrect. That the cover must be changed to reflect that this is a "Petition For Writ Of Certiorari to the

Circuit Court of Smyth County, Virginia" because that court decided the case on the merits, and that the petitioner could represent himself and his interest but, could not represent his corporation (Reply Appendix A p. 1a).

Petitioner didn't understand all the directions set forth in said letter and called Ms McDivitt, many times, for assistance. Petitioner was most concerned with the styling of the case, which he was advised was irrelevant. In addition, as the record and the appendix shows, that for some unscrupious reasons, the styling of the case is radical throughout the preceeding below, and the petitioner is yet confused as to what is appropriate. Upon directions, corrections and changes were made "format only" and the petition was returned to the Clerk of the United States Supreme Court and accepted.

If petitioner's petition had been refused, and another one filed, as argued by respondent, said petition would be untimely filed, therefore, would not have been accepted by the Clerk.

Whether or not petitioner appealed the Court's ruling of May 2, 1989, dismissing him as a plaintiff, and whether or not he was remained a party plaintiff in the trial is irrelavant because, Edward R. Wyatt, pro se, is the petitioner in this case which went to the Supreme Court of Virginia, and to this Court, styled Wyatt Mining Equipment, Inc. v. Robin S. Thomas, et al., as a party in interest. It is well established in the Rules of the Supreme Court of Virginia, the Supreme Court of the United States, and the Constitution of the United States, that any party has the "right" to represent himself/herself or his/her in

any Court of the United States.

Allstate Insurance Company, who was not a party in this case was included in the orders "after the trial". Counsel for Allstate, after representing them for over two (2) years, resigned when petition for writ of certiorari was filed. Allstate retained other counsel, who waived the right to file a Brief In Opposition. Neither counsel for Allstate were/are confused about who is the petitioner in this case. Their only statement, even though they waived their right to file a brief and had no right to make a statemant, was only that petitioner had no right to represent his corporation. (Reply Appendix F, G pp. 19a, 21a.

The appeal to the Virginia Supreme Court of Virginia is in conflict because, "ignoring all the other assignment of errors to said Court", if

misconduct was not practiced in said Court, then said appeal should have been granted on the grounds that the Circuit Court of Smyth County, Virginia, erred by refusing motions, re-motions, and request, and by refusing Edward R. Wyatt the "right" to represent his corporation or his interest at the M. T. S. A. on the grounds that Edward R. Wyatt "sole owner of Wyatt Mining Equipment, Inc." was not authorized to represent his corporation or his interest.

If the Supreme Court of Virginia ruled that Edward R. Wyatt is not allowed to represent his corporation, or his interest, and if mis-conduct was not practiced in said Court, then the appeal should have been refused and not reviewed. The Order entered on May 31, 1989, states that the appeal was refused on the grounds

that there was no reversible error. Opinion of the Supreme Court of Virginia, Notice of Appeal and assignment of errors, error number 10. (Petition, Appendix B, p. 2a) (Reply, Appendix E, J, pp. 17a, 28a).

Persuant to Rule 29.4(b) of the Rules of the United States Supreme Court, the constitutionality of the Fourteenth Amendment to the Constitution is drawn in question and 28 U.S.C. ss2403(a) may be applicable, therefore, a copy of the Petition For Writ Of Certiorari, Brief In Opposition, and Reply Brief is being served on the Solicitor General, Department of Justice, Washington, D.C. 20530. And no Court below has certified to the Attorney General the fact that the constitutionality of the Fourteenth Amendment was drawn into question.

CONCLUSION

The Petition For A Writ Of Certiorari should be granted for the foregoing reasons, for the reasons set forth in the petition, for the benefit of public interest, and in defense of our Constitution of the United States referred to as "reincarnations of prior state law claims, thinly veiled". And enforce Rule 8.1, and 8.2 of the Rules of the Supreme Court of the United States.

Respectfully Submitted,

Edward R. Wyatt
P.O. Box 1062
Marion, VA 24353
Pro se

Dated: February 20, 1991

APPENDIX A 12/3/90

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON,D.C. 20543

December 3, 1990

Mr. Edward R. Wyatt
P.O. Box 1062
Marion, Virginia 24354-1062

RE: WYATT MINING EQUIPMENT, INC.
V.
ROBIN S. THOMAS, ET AL.

Dear Mr. Wyatt:

Enclosed are 39 copies of your petition for writ of certiorari, which were received November 28, 1990. The petition must be corrected to comply with Rules 14 and 33 of the Rules of the Supreme Court.

The orders and opinions required by Rule 14.1(K) must be placed at the end of the petition, in an appendix.. I have enclosed sample copies of paid petitions for your reference.

Rule 33 governs the professional

printing and the typing and photocopying format for cases submitted on the paid docket. Forty copies of the petition and appendix, (whether or not it is under separate cover from the petition), must be sumitted on paper which is 6-1/8" by 9-1/4", and there must be at least 3/4" margin on all sides of the text. All material within the petition and appendix must be typed with pica type and double spacing, with the execption of footnotes and indented quotations, or professionally printed. Please note that photoreductions are expressly prohibited by that rule. This Court no longer accepts plastic bindings of any sort, pursuant to Rule 33.1(d). The petition must be secured in at least two places along the left margin, and it must be covered on front and back with white paper which is heaver than the pages. The application number must be

removed from the cover, because another number will be assigned to the petition, which will be stanped on each copy by this office.

The cover must be changed to reflect that this is a "petition for Writ of Certiorari to the Circuit Court of Smyth County, Virginia, because that court decided the case on the merits. See Rule 33.2(5).

Please note that although you may represent yourself individually, you cannot represent your corporation, because only a member of this Court's bar may represent another individual or entity. If you intend to have the corporation be included as a petitioner, you must hire a Supreme Court bar member to represent it. See Rules 7 and 33.2(7).

Please submit 40 corrected copies of the petition promptly, and a notarized

certificate of service, reflecting that three copies of the corrected petition were mailed to opposing counsel. See Rules 33.7 and 29.5. The brief in opposition will be due 30 days from the sumission of the corrected petition.

I have retained one copy of the petition, correspondence, and your check in the amount of $300.00

Very truly yours,

JOSEPH F. SPANIOL, JR., CLERK

By /s/ Suzy McDivitt

Suzy McDivitt
Assistant Clerk

cc: Greg Freaney
William W. Eskridge, Esq
Michael A. Proffit

APPENDIX B 10/22/90

SUPREME COURT OF THE UNITED STATES

No. A-295

Wyatt Mining Equipment, Inc.,

Petitioner

v.

Robin S. Thomas, et al.

O R D E R

UPON CONSIDERATION of the application of counsel for the petitioner,

IT IS ORDERED that time for filing a petition for a writ of certiorari in the above-entitled case, be and the same is hereby, extended to and including November 28th, 1990.

/s/ "William H. Rehnquist

Chief Justice of the United States

Dated this 22nd

day of October, 1990.

APPENDIX C 10/11/90

WYATT MINING EQUIPMENT, INC.
EDWARD R. WYATT PRES.
PO BOX 1062
MARION, VIRGINIA 24354

Phone 703/783-2247
Fax 703/783-2247

October 11, 1990

JOSEPH F. SPANIOL, JR.
Supreme Court
U.S. Supreme Court Bldg.
Washington, D.C. 20543

Re: Petition for sixty day extention
to file Writ of Certiorari

Wyatt Mining Equipment, Inc.
v.
Robin S. Thomas and
Michael Anthony Proffit

Va. Supreme Court No. 900444

Circuit Court No. L-1840

Dear Mr. Spaniol:

Enclosed please find the original and two copies of a Petition for Sixty Day Extention to file Writ of Certiorari, and a copy of the opinion, which I request you file and forward to the Hornorable William H. Rehnquist, Chief Justice. Thank you

for your assistance.

With best regards, we remain

Very truly yours,

/s/ Wyatt Mining Equipment, Inc.

WYATT MINING EQUIPMENT, INC.

BY: /s/ Edward R. Wyatt

EDWARD R. WYATT PRES.

/s/ Edward R. Wyatt

EDWARD R. WYATT

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1990

WYATT MINING EQUIPMENT, INC. AND

EDWARD R. WYATT PETITIONERS

VS.

ROBIN S. THOMAS AND

MICHAEL ANTHONY PROFFIT RESPONDENTS

PETITION FOR: SIXTY DAY EXTENTION TO FILE

WRIT OF CERTIORARI

TO: WILLIAM H. REHNQUIST, CHIEF JUSTICE

PETITION FOR SIXTY DAY EXTENTION TO FILE

WRIT OF CERTIORARI

WYATT MINING EQUIPMENT, INC.
EDWARD R. WYATT PRES.
P.O. BOX 1062
MARION. VIRGINIA 24354-1062
PHONE: 703/783-2247

/s/ Wyatt Mining Equipment, Inc.

WYATT MINING EQUIPMENT, INC.

/s/ Edward R. Wyatt Pres.

By: EDWARD R. WYATT Pres.

/s/ Edward R. Wyatt

EDWARD R. WYATT

JURISDICTION

The opinion of the Supreme Court of Virginia was filed on July 31, 1990. The jurisdiction of this Court is invoked pursuant to the First, Fifth, and Fourteenth Amendment to the Constitution. Civil Rights 13, 13.8(1) Conspiracy, 18 U.S.C. ss 242, the orimal anolog of ss 1983. Civil Rights 13 42 U.S.C.A.ss 1983. Freedom of speech under 42 U.S.C. ssss 1983 & 1985, with jurisdiction in this court to hear such claims conferred by 28 U.S.C. ss 1343 (1-4). 28 USCS ss1651. 28 U.S.C. ss1257.

REASONS FOR GRANTING THE PETITION

1. That petitioners, Wyatt Mining Equipment, Inc., and Edward R. Wyatt sole owner, president, registered agent, secretary and treasurer of Wyatt Mining Equipment, Inc., which is no longer active, is not financially able, at this time, to pay the docket fee, and does not wish to proceed In Forma Pauperis.

2. That Edward R. Wyatt, who is not an attorney, but due to financial conditions, was required to proceed in Circuit Court, after terminating attorneys for misconduct, in The Virginia Supreme Court and now in preparing the said writ, which requires extended time to do so.

3. That Edward R. Wyatt, who is under mental and physical therapy with the Mountain Home Veterans Hospital, Johnson City, Tennessee, due to the strain that this cause has put him under, which

requires extended time for both physical and mental reasons, that medication is impairing his memory, causing him to have to rely on records, which he is having legal problems in his attempt to accumulate.

4. That Wyatt Mining Equipment, Inc. and Edward R. Wyatt alleges there is probable cause that the Petition for Appeal to The Supreme Court of Virginia was tampered with and may require further pursuit in said Court or another Court.

5. That this matter, and other matters in regards to this, are being viewed by the panel of the American Civil Liberty Union, which requires extended time for said viewing, considerations, and decisions.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1990

NO._____

WYATT MINING EQUIPMENT, INC. AND
EDWARD R. WYATT PETITIONERS

V.

ROBIN S. THOMAS AND
MICHAEL ANTHONY PROFFIT RESPONDENTS

PROOF OF SERVICE

I, Edward R. Wyatt, do swear and declare that on this date, October 11, 1990, pursuant to Supreme Court Rules 29.3. and 29.4, I have served the attached PETITION FOR SIXTY DAY EXTENTION TO FILE WRIT OF CERTIOUARI on each party to the above proceeding, or that party's counsel, and on every other person required to be

served by depositing an envelope containing the above document in the United States mail properly addressed to each of them and with first-class postage prepaid.

The names and addresses of those served are as follows:

William W. Eskridge, counsel for respondent Robin S. Thomas, P. O. Box 2288, Abingdon, Virginia 24210, telephone no. (703) 628-5151.

Michael Anthony Proffit, without counsel, P. O. Box 503, Chilhowie, Virginia 24319, telephone (703)-646-5694.

Howard C. McElroy, counsel for Allstate Insurance Company, P.O. Box 429, Abingdon, Virginia 24210, telephone (703) 628-9515.

/s/ Wyatt Mining Equipment, Inc.

WYATT MINING EQUIPMENT, INC.

/s/ Edward R. Wyatt

By: _____

EDWARD R. WYATT Pres.

/s/ Edward R. Wyatt

EDWARD R. WYATT

Subscribed and Sworn to Before Me

this 11th day of October, 1990.

/s/ Lois Russell

Notary Public in and for said

County and State

APPENDIX D 09/7/90

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Friday the 7th day of September, 1990.

Wyatt Mining Equipment, Inc., Appellant

against Record No. 900444

Circuit Court No. L-1840

Robin S. Thomas, et al.,

ORDER DEFERRING ISSUANCE OF MANDATE

Upon consideration of the motion of the appellant, by Edward R. Wyatt, its President, it is ordered that issuance of the mandate entered herein July 31, 1990 be and the same hereby is deferred, to and including the 29th day of October, 1990, on the expiration of which time the same may be issued, unless the case has been before that time docked in the Supreme Court of the United States, in which event

issuance thereof shall be deferred until the final determination of the case by that Court.

A Copy,

Teste:

/s/ David B. Beach
Clerk

APPENDIX E 02/13/90

VIRGINIA: IN THE CIRCUIT COURT OF THE COUNTY OF SMYTH

WYATT MINING EQUIPMENT INC.,	)
	)
Plaintiff	)
	)
v.	)
	)
ROBIN S. THOMAS AND	)
	)
MICHAEL ANTHONY PROFFIT	)
	)
Defendants	)

NOTICE OF APPEAL

The plaintiff, Wyatt Mining Equipment Inc., solely owned by Edward R. Wyatt, but no longer in operation and is without legal counsel at this time hereby, in order to preserve the appeal right of the corporation, gives notice of appeal from the decree of this Court entered on January 16, 1990, and further gives notice that the trial transcript covering the testimony, which the plaintiff objected to

as it being a conspiracy to fraud and perjured, and other incidents of trial have been filed and other incidents of trial are yet to be filed, all in compliance with Rule 5:6 of the Rules of the Supreme Court of Virginia.

The plaintiff further wishes to file the enclosed certified copy of the 1989 annual report of Wyatt Mining Equipment Inc., verifying that Edward R. Wyatt is sole owner of said corporation.

/s/ Wyatt Mining Equipment Inc.

WYATT MINING EQUIPMENT INC.

/s/ Edward R. Wyatt Pres.

By: _____

EDWARD R. WYATT Pres.

APPENDIX F 02/7/91

William K. Suter, Clerk
Supreme Court of United States
One First Street, NE
Washington, D.C. 20543

Re: Wyatt Mining Equipment, Inc.
v.
Robin S. Thomas, et al.

No. 90-1133

Dear Mr. Suter:

We represent Allstate Insurance Company, one of the respondents in the above-referenced case pendong on the petitioner's application for a writ of certiorari. Allstate Insurance Company hereby waives its right to file a brief in opposition to the petition under Rule 15 of the Supreme Court Rules.

To date, Edward R. Wyatt has appeared pro se in this proceeding and has filed his pleading under the style Edward R. Wyatt, Petitioner, v. Robin S. Thomas, et al., Respondents. The case in the Virginia Supreme Court from which Mr. Wyatt seeks a

writ of certiorari was, however, a lawsuit in which his corporation, Wyatt Mining Equipment, Inc., was the plaintiff. Mr. Wyatt thus appears to be noncomplaint with the well-established rule that a party may appear pro se only individually and not in a representative capacity for a corporation.

We are by copy of this letter advising the other parties or their attorneys of Allstate Insurance Company's waiver of its right to file a brief in opposition to the petition.

Thank you for your assistance.

Very truly yours,

GENTRY LOCKE RAKES & MOORE

/s/ Charles L Williams, Jr.

Charles L. Williams, Jr.

APPENDIX G 11/29/90

Mr. Joseph F. Spaniol,Jr
Clerk of the Court
Supreme Court of the United States
Washington,D.C.20543

Re: Wyatt Mining Equipment, Inc.
v.
Robin S. Thomas and
Michael Anthony Proffit

U.S. Supreme Court (Application No. A-295)

Our File No. 1487-LT-033

Gentlemen:

Allstate Insurance Company was served with process in this case as the plaintiff's uninsured motorist carrier. My firm and I were counsel of record for Allstate during the proceedings in the Circuit Court of Smyth County, Virginia, and in the Supreme Court of Virginia.

Today, I received a copy of a Petition for Writ of Certiorari filed on behalf of the plaintiff in the Supreme Court of the United States.

Please be advised that my firm

and I have not been, and will not be, retained to represent Allstate in any of the proceedings in this case in the Supreme Court of the United States. Please direct all correspondence and other papers regarding such proceedings to the following Allstate employee: Mr. Greg Freaney, Allstate Insurance Company, P.O. Box 20869, Roanoke, Virginia 24018. By a copy of this letter, Iam sending to Mr. Freaney the copy of the Petition for Writ of Certiorari that I received today.

Thank you.

Sincerely,

/s/ Howard C. McElroy

Howard C. McElroy

c: Mr. Greg Freaney (with copy of Petition)

APPENDIX H Filed: 4/7/89
Heard: 5/2/89

VIRGINIA:

IN THE CIRCUIT COURT OF SMYTH COUNTY

EDWARD R. WYATT,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Law No. ____
	)	
ROBIN S. THOMAS and MICHAEL ANTHONY PROFFIT,	)	
	)	
Defendants.	)	

NOTICE

TO: James N. L. Humphries, Esq.
Penn, Stuart, Eskridge & Jones
Post Office Box 2288
Abingdon, Virginia 24210

Howard C. McElroy, Esq.
White, Elliot & Bundy
Post Office Box 429
Abingdon, Virginia 24210

PLEASE TAKE NOTICE that the undersigned will request that on May 2, 1989 at 10:00 o'clock a.m., or soon thereafter as counsel may be heard, in the Circuit Court of Smyth County, Marion, Virginia, that the Honorable C.

B. Flannagan, II, Judge, rule upon Motions filed on behalf of plaintiff as follows:

Motion to Add Party Plaintiff

Motion for Leave to Amend Motion for Judgment

Motion for Default Judgment

You are invited to attend and protect your interests therein.

EDWARD R. WYATT
By Counsel

BOUCHER, MITCHELL AND HUTTON
188 East Main Street
Abingdon, Virginia 24210

By: /s/ David J. Hutton

APPENDIX I Filed: 4/7/89
Heard: 5/2/89

VIRGINIA:

IN THE CIRCUIT COURT OF SMYTH COUNTY

EDWARD R. WYATT,)
)
Plaintiff,)
)
v.) Law No. _____
)
ROBIN S. THOMAS and)
MICHAEL ANTHONY PROFFIT,)
)
Defendants.)

MOTION FOR LEAVE TO AMEND
MOTION FOR JUDGMENT

Comes now the plaintiff, Edward R. Wyatt, by counsel, and respectfully moves the Court pursuant to Rule 1:8 of the Rules of the Supreme Court of Virginia for leave to amend the Motion for Judgment previously filed herein as set forth in the Amended Motion for Judgment attached hereto, and in support thereof states as follows:

1. By Motion filed

contemporaneously herewith, plaintiff has requested the Court add as a party plaintiff in this proceeding Wyatt Mining Equipment, Inc.

2. The addition of Wyatt Mining Equipment, Inc. as a plaintiff in this proceeding will require an Amended Motion for Judgment.

3. Plaintiff desires to add as an additional count to the Motion for Judgment previously filed herein a cause of action alleging negligent entrustment by the defendant Robin S. Thomas.

4. The granting of this Motion by the Court will promote the ends of justice, allowing the plaintiffs to allege all potential causes of action arising out of the accident and damage to plaintiff's automobile which occured on October 31, 1987 as set forth in the Motion for Judgment.

WHEREFORE, the plaintiff, by counsel, respectfully moves the Court for leave to amend the Motion for Judgment previously filed herein as set forth in the attached Amended Motion for Judgment.

EDWARD R. WYATT
By Counsel

BOUCHER, MITCHELL AND HUTTON
188 East Main Street
Abingdon, Virginia 24210

By: /s/ David J. Hutton

APPENDIX J 4/10/90

WYATT MINING EQUIPMENT INC.,

VS.

ROBIN S. THOMAS AND
MICHAEL ANTHONY PROFFIT.

PETITION FOR APPEAL

ASSIGNMENTS OF ERROR

1. In failing to grant the plaintiff's Default Judgment against defendant Proffit when he failed to file responsive pleading to Motion For Judgment.

2. In granting the defendants Motion For Summary Judgment, over plaintiff's objection, when the matter was in dispute.

3. In granting the defent Thomas' Motion To Strike without viewing the evidence most favorable to the party against whom the motion was made.

4. In granting the defendant Thomas' Motion To Strike withour viewing the

evidence most favorable to the party against whom the motion was made.

5. In granting the defendant Proffit's Instruction's Number A, B, and C over plaintiff's objectiopn's.

6. The plaintiff has discovered evidence since the trial that the defendants and their witness testified falsely as to material matters in an effort to further their defense.

7. In collaborating with defendant Proffit and counsel for Allstate, plaintiff's carrier, and advising said defendant.

8. In overruling plaintiff's objections to matters that were introduced by defendants that were irrelevant, know to be false and for the sole purpose of degrading the plaintiff.

9. In failing to allow plaintiff to introduce plaintiff's Exhibit Number Four.

10. In failing to allow plaintiff to

discharge counsel and represent himself or, in the alternative, retain other counsel.

11. In allowing Joinder of Nondiverse Defendant then to Diversity in the last alternative.